IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

SECOND APPEAL NO. 491 OF 2004

Rubab Dilawar Hasan Ali Memani ... Appellant

V/s

Abndul Rahiman abdul Rajjale Katalariwalla & ors. ... Respondents

Shri P.B. Shah for the appellant.

Shri G.S. Godbole i/by M/s. L.N. Khatri & Co. for the respondents.

CORAM: P.V. KAKADE, J.

DATED: 4TH OCT., 2004.

P.C.:

1. This is an appeal preferred against the judgment and decree passed by the Addl. District Judge, Satara dated 15.7.2003 wherein the appeal of the respondent was allowed with proportionate cost and judgment and decree passed in Spl. Civil Suit No. 190 of 1995 by Joint Civil Judge, Sr. Divn., Satara dated 7.2.2001 was set aside. The appellant - defendant No.1 was directed to hand over the possession of the suit shop to the plaintiffs, however, plaintiffs' claim to recover an amount of Rs.1,45,000/- from the defendant was

dismissed.

2. The suit shop was situated at final Plot No. 156 at Panchgani, Tal. Mahabaleshwar, Dist. Satara and owned by one Honrao and father of the plaintiffs had taken the suit shop on rental basis and was doing business of stationery and other sundry articles. Plaintiffs' father died on 6.12.1967 and thereafter mother of plaintiffs' namely, Johrabai and their sister i.e. defendant No.2 used to look after the said shop. The suit shop was given to defendant No.1 under leave and license agreeemt dated 1.6.1988. The plaintiffs demanded possession of the suit shop from defendant No.1 by notice dated 11.9.1995 but defendant No.1 refused to comply with the notice and hence the suit came to be filed for possession of the suit shop from defendant No.1 as well as for past and future mesne profits. The plaintiffs thereafter amended the plaint and contended that their father Abdul Razaq had executed a will dated 24.8.1967 in respect of the suit shop and after the death of their mother they acquired right over the suit shop. The plaintiffs also alleged that defendants 1 and 2, by practicing force upon their mother, got executed the agreement dated 8.6.1988, however, defendant No.1 has not acquired any tenancy right over the suit shop.

As per the agreement, defendant No.1 has not delived the possession of the suit shop at the end of expiration of agreement period on 31.5.1993.

Defendant No.1 challenged the suit and denied that father of plaintiffs had taken suit shop on rental basis. Defendant No.1 contended that, as plaintiffs had withdrawn the earlier suit with no hope to proceed, the present suit was suffered by principles of res-judicata. It was also contended that mother of defendant No.2 namely Johrabi, since beginning was exclusively tenant over the suit shop at the rate of Rs.45/- per month. On such and other grounds, the suit was sought to be dismissed with costs.

3. The learned Trial Judge adjudicated the dispute on merits and came to the conclusion that plaintiffs had proved that the possession of defendant No.1 in the suit property was unlawful and it was held that the plaintiff was entitled to decree for possession and decreed the suit against the defendant.

4. The appeal was carried to the District Court, Satara. The Addl. District Judge, Satara, partly allowed the appeal and ordered the defendant No.1 to

hand over the possession of the suit shop to the plaintiffs. the suit claim amount of Rs.1,45,000/- came to be dismissed. Hence the present appellant has come against the order passed by the lower Appellate Court so far as decree for possession is concerned.

5. At the outset, it may be noted that, so far as the decree for possession is concerned, there are concurrent findings recorded by both the Courts below that present appellants are liable to be evicted from the suit premises on the ground that plaintiffs have proved their case in that respect. It may also be noted that these contentions were raised on behalf of the defendant but it was held by the lower Appellate Court that defendant No.1 was in possession of the suit shop, therefore, the possession was liable to be taken from defendant No.1 only and not from defendants 2 & 3. In this regard, the learned counsel for the appellant took me through various documents on record. However, in my considered view, there is no substantial question of law involved in this case. In the case of **Kondiba Dagadu Kadam v/s Savitribai sopan Gujar, reported 1999 SCC 2213,** the Apex Court has observed that conditions mentioned in Sec.100 must be strictly fulfilled before a second appeal can be maintained and no Court has power to add to or enlarge

those grounds. The concurrent findings of facts of whatsoever erroneous nature cannot be disturbed by the High Court in exercise of powers under Sec.100 of the C.P.C. The substantial question of law has to be distinguished from substantial question of fact. It is not within the domain of the High Court to investigate the grounds on which the findings were arrived at, by the last Court of fact, being the first appellate Court. In a case where from a given set of circumstances two inferences are possible, one drawn by the lower Appellate Court is binding on the High Court in second appeal. Adopting any other approach is not permissible. If we apply this ratio to the present case, no interference is called for by this Court as contemplated under Sec.100 of the C.P.C., especially when there is no substantial question of law is involved in this case, which has not been settled earlier by Apex Court or this Court.

In the result, the second appeal stands dismissed with no order as to costs.

Consequently, the civil application also stands dismissed with no order as to costs.

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